IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Hemraj Singh Vs. Nandlal & Ors.
S.B. CIVIL FIRST APPEAL NO.84/2005

Against judgment and decree dated 28.02.2005 passed by Addl. District Judge No.2, Bikaner in Civil Original Suit No. 73/1997 – Hemraj Singh Vs. Nandlal & Ors.

DATE OF JUDGMENT: 1st May, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. M. Mridul for appellant.
Mr. H.S.Sidhu for respondent No.1
Mr. R.D. Sidhu for Mr. HSS Kharlia for respondents No.2 & 3.

BY THE COURT:

The Civil Original Suit No. 73/1997 – Hemraj Singh Vs. Nandlal & Ors., filed by the appellant for specific performance of contract, restraining the respondents from dispossessing him and for mutation of the land in dispute in his name, came to be dismissed vide judgment and decree dated 28.02.2005 passed by learned

Addl. District Judge No.2, Bikaner, aggrieved of which plaintiff has approached this Court by filing the present first appeal under Sec. 96, CPC.

In the suit of the appellant, it was inter-alia averred that respondent-defendant No.1 agreed to sell certain lands to him by an agreement to sale on 26.02.1991 entered into between the parties for Rs.2 lacs and on the very same day immediately after receiving a sum of Rs.1,90,000/-, he was put in possession pursuant to the said agreement and thereafter he made huge investment for its improvement and cultivated the land for years but despite request being made many a times to respondent No.1 to execute sale deed and get it registered he did not care about that and in May 1997 refused to execute the sale deed and get the registry of the land done in his favour rather sold the land to respondent No.2 & 3. The appellant in the suit prayed for getting the land registered in his name and, in the alternative, for a decree for Rs. 1,90,000/-

with interest @24%.

Defendant No.1, in his written statement denied existence of any such agreement and refused to have received Rs.1,90,000/- or handing over possession of land to the appellant. Defendant No.2 & 3 filed joint statement wherein they have supported the stand taken by defendant No.1 and stated that they have purchased the land in dispute from defendant No.1 by a registered sale deed and they are entitled to retain possession. They prayed that the suit was liable to be rejected.

On the pleadings of the parties, trial Court framed the following issues:

1. Whether defendant Nandlal has not entered into any agreement to sale with plaintiff and the agreement dated 26.02.1991 is the outcome of forgery?

2. Whether on account of the agreement dated 26.02.1991 being unregistered the suit is not maintainable?

3. Whether the agreement dated 26.02.1991 being insufficiently stamped is not admissible in

evidence?

4. Whether the defendants No.2 & 3 are the bonafide purchasers? If yes, what is its effect on the suit?

5. Whether the plaintiff was ever ready and willing to perform his part of the sale agreement dated 26.02.1991?

6. Relief?

The learned trial Court, after hearing the parties, while deciding Issue No.1 relating to defendant Nandlal entering into an agreement to sale with plaintiff and the agreement dated 26.02.1991 being a forged one, came to the conclusion that the defendants failed to prove by evidence the issue in question thus decided it in favour of plaintiff and against the defendants. While deciding Issue No.2 & 3 jointly in respect of maintainability of the suit, the agreement dated 26.02.1991 being unregistered and not admissible in evidence on account of deficiently stamped, the court found that the agreement was executed on a stamp paper of Rs.5/- and as the agreement recites about handing over the possession of the land

to the plaintiff it was necessary to be got registered as per law for which earlier orders were passed to deposit the court fees but as the same was not complied with, decided the issues against the plaintiff and in favour of defendants. The burden to prove issue No.4 showing that defendants No.2 & 3 are the bonafide purchasers was on the defendants but as no evidence was produced on their behalf it was decided against them. Issue No.5 was in relation to the plaintiff being ever ready and willing to perform his part of the contract and was decided against the plaintiff as despite opportunities being granted he could not produce evidence in his favour and ultimately evidence for the plaintiff was closed on 16.12.2004 and as the plaintiff could not produce any order favourable to him in the writ petition filed by him before this Court against that order of closing evidence, the issue was decided against him. The trial Court in view of its decision on issue No.5, decided issue No.6 of relief also against the plaintiff and

dismissed the suit.

It has been contended by the learned counsel for the appellant that the trial Court in its order dated 10.07.2001 committed manifest error in holding that the document executed between the parties was one sale-deed whereas it was only an agreement to sale. According to the learned counsel, in view Item No.35 of the Schedule II attached to the Stamps Act, 1899, the document in question could not be considered as a sale deed as it was only a lease deed. The learned counsel submits further that the agricultural lands always vest in the ownership of the State, therefore, what a Khatedar (land holder) does is transfers his khatedari rights in the agricultural land, therefore, no stamp duty was required in the present case. It has next been contended that the document in question was not required to be registered as it was only an agreement to sale in view of Sec.49 of the Registration Act because it is covered under Sec.54 of the T.P. Act. According to the learned counsel, Sec.49

of the Registration Act is not applicable to agreements to sale and the trial Court should have adopted the procedure in such matters under the Stamps Act for impounding the document, the concerned Collector was required to conduct an enquiry as envisaged under the Stamp Act. Learned counsel also submits that the trial Court has not proceeded in the matter legally, therefore, the findings recorded by the trial Court on Issue No.2 & 3 are liable to be quashed and set aside and the matter is required to be remitted back to the trial Court to proceed in the matter in accordance with law.

On the other hand, it has been submitted that the trial Court has correctly dismissed the suit. It has also been submitted that the trial Court as early as in the year 2001 while considering the matter after framing of issues, particularly tried Issue No.2 & 3 as preliminary issues and passed an order dated 10.07.2001 to the effect that the document i.e.

agreement to sale shall be admissible in evidence only when deficit stamp duty is made good along with the penalty i.e. 10 times is deposited in the trial Court but no compliance whatsoever of the order has been made nor the order was challenged anywhere. It has also been contended that the plaintiff who has filed the suit for specific performance was required to prove his case but the plaintiff has failed to prove its case as no evidence in the case was produced, therefore, the trial Court has correctly dismissed the suit. The learned counsel submits that under the provisions of Registration Act when sale of an immovable property takes place and possession in relation to the immovable property is handed over to the buyer then such document is required to be registered whereas in the instant case it is an admitted position that the agreement to sale in the present case has not been registered, therefore, the document was not admissible in evidence. The learned counsel submits that the trial Court has considered the matter in

detail and thereafter passed the impugned judgment and decree correctly, which calls for no interference by this Court.

I have considered the submissions made before me.

In the instant case, it appears from the averments made in the plaint that the plaintiff has based his claim on the basis of an agreement to sale dated 26.02.1991 in relation to some agricultural land of defendant No.1. It has been stated in the agreement dated 26.02.1991, which is on a stamp of Rs.5/-, that total sale consideration in relation to the agricultural land agreed was Rs.2 lacs and at the time of execution of the agreement to sale a sum of Rs. 1,90,000/- was paid by the plaintiff to the defendant. It is also stated in the agreement that a sum of Rs.10,000/- will be paid at the time of registry. Since the defendant initially tried to avoid the registry and ultimately in the

year 1997 refused even to accept the agreement executed by him and sold the land to other persons, therefore, it became essential for him to file the suit.

The document in relation to the sale of agricultural land in the present case as per the findings of the learned trial Court is an agreement to sale whereas the contention of the learned counsel for the appellant has been that it is a lease and its registration was not essential looking to the nature of the document that it only transfers the Khatedri rights.

It is well settled proposition of law that while considering the nature of a document it is always essential to take into consideration the entire document and if after considering the entire document it suggests that it is an agreement to sale or it is a document for other purpose, the conclusions are drawn. The document available is on a non-judicial stamp of Rs.5 bearing no date. As

stated above, it makes a mention that the agricultural land, mention of which has been made in the plaint, was purchased by the plaintiff from the defendant after making payment of Rs.1,90,000/-, the total amount of the land agreed between the parties was Rs.2 lacs. This document also says that possession of the land was also handed over. Thus, on a perusal of the document, taking into consideration the contents of the document, it cannot be said that it was a lease-deed. In fact, what appears from the perusal of this document is that in lieu of agricultural land in consideration sale price was received by the defendant. The contents of the document also indicate that registry was required to be made on a subsequent date after making payment of remaining consideration i.e. Rs.10,000/-. Thus, to say that this document was only a lease in view of Schedule II attached to the Rajasthan Stamps Act, 1952 and particularly Item No.35 thereof, is without substance. Item No.35 of the Schedule is being reproduced

hereunder:

35. Lease- including and under lease, or sub lease and any agreement to let or sub-let- (a) Where, by such lease, the rent is fixed and no premium is paid or delivered,-	
(i) Where the lease purports to be a term for not less than one year.	The same duty as on a Bond (No.15) for the whole amount payable under such lease
(ii) Where the lease purports to be for a term of not less than one year but not more than twenty years;	The same duty as on a conveyance (No.23) for a consideration equal to the amount or value of the average rent of two years.
(iii) Where the lease purports to be for a term in excess of twenty years or perpetuity or where the term is not mentioned.	The same duty as on a conveyance (No.23) on the market value of the property which is the subject matter of the lease.
Explanation: The term of a lease shall not only the period stated in the document but shall be deemed to be the sum of such stated period along with all previous periods immediately preceding this without a break for which the lessee and lessor remained the same.	
(b) where the lease is granted for a fine or premium or for money advanced or development charges advanced or security charges advanced and where no rent is reserved;	
(i) where the lease purports to be for a term of not less than twenty years	The same duty as on a conveyance (No.23) for a consideration equal to the amount or value of such fine permium, advance as set fourth in the lease.

(ii) where the lease purports to be for a term of twenty years or more, or in perpetuity or where the perm is not mentioned	The same duty as on conveyance (No.23) on the market value of the property which is the subject matter of the lease.
(c) where the lease granted for a fine or premium or for money advanced or development charges advanced or security charges advanced in addition to rent reserved-	
(i) Where the lease purports to be for a term of less than twenty years	The same duty as on a conveyance (No.23) for a consideration equal to the amount or value of such fine premium or advance and amount of average rent of two years as set fourth in the lease:
(ii) Where the lease purports to be for a term of twenty years or in perpetuity or where the term is not mentioned	The same duty as on a conveyance (No.23) on the market value of the property which is the subject matter of the lease: Provided that in any case when an agreement to lease is stamped with the stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed ten rupees.
Exemptions: **(a) Lease, executed in the case of a cultivator and for purposes of cultivation (including a lease of trees for the production of food or drink).**	

A perusal of the above provisions alongwith exemptions when seen taking into consideration the agreement to sale dated 26.02.1991, it cannot be said by any stretch of imagination that this document is a lease-deed. It is correct that the ownership in all the agricultural lands vests in the State and only the Khatedari rights which are inheritable and transferable in nature are transferred by sale but that does not mean that since the ownership of the agricultural land remains with State therefore such documents dealing such matters should be considered as if the document is a lease.

In the present matter, the point which requires consideration is as to whether the trial Court has not correctly recorded the findings on the issues framed and therefore the judgment and decree passed by the trial Court requires interference by this Court?

Sec.17 of the Indian Registration Act

makes a mention that the documents in relation to agreement to sale of immovable property coupled with possession are required to be registered. Sec.49 of the Act states about the effect of non-registration of documents required to be registered.

In the present case it appears from the perusal of agreement to sale in relation to suit land consideration was paid and possession was handed over of the suit land then such document before it is made admissible in evidence the same is required to be registered and properly stamped under the provisions of Stamps Act and the Indian Registration Act.

It is to be seen that the learned trial Court took up for consideration issue No.2 & 3 as preliminary issues, which were in relation to the document being unregistered and unstamped and inadmissible in evidence. After hearing both sides, the trial Court vide order dated 10.07.2001 stated as under:

"10. वि० अधिवक्ता प्रतिवादी का तर्क है कि भारतीय रजिस्ट्रेशन एक्ट की संशोधित धारा 17(1) (ई) जो कि दिनांक – 18.9.1989 से प्रभावी की गयी है, के अनुसार विक्रय संविदा के इकरारमे का पंजीकरण होना आवश्यक है और इसको वर्तमान प्रकरण में पंजीकृत नहीं करवाया गया है, इसलिये इस दस्तावेज को साक्ष्य में ग्राहय नहीं किया जा सकता है । इन तर्कों का विरोध वि० अधिवक्ता वादी की ओर से किया गया है और तर्क रखा गया है कि धारा 49 रजिस्ट्रेशन एक्ट,1908 के परंतुक के अनुसार इस दस्तावेज सामपार्शिवक उद्देश्य हेतु साक्ष्य में ग्राहय किया जा सकता है और उन्होनें मेरा ध्यान न्यायिक निर्णय 1996 सी सी सी पृष्ठ 512 मान. गुजरात उ० न्यायालय के निर्णय तथा 1997 डी एन जे (राज.) पृष्ठ 123 के निर्णय की ओर आकृष्ट किया है।

11. मैनें दोनों पक्षों के तर्कों पर विचार किया। चूंकि धारा 49 रजिस्ट्रेशन एक्ट के परंतुक में यह प्रावधान है कि यदि कोई प्रलेख इस अधिनियम के अंतर्गत अथवा अनुसार पंजीकृत होना चाहिये, किंतु उसे पंजीकृत नहीं करवाया गया है तथा ऐसा दस्तावेज अचल संपत्ति की विक्रय की संविदा है तो विनिर्दिष्ट पालना के वाद में संविदा को साबित करने के लिये साक्ष्य के रूप में इसे समपार्शिवक उद्देश्य हेतु ग्राहय किया जा सकता है। यह दस्तावेज इस संशोधन के उपरांत का दस्तावेज है, इसलिये इसे उपर्युक्त उद्देश्य हेतु साक्ष्य में ग्राहय किया जा सकता है।

12 जहाँ तक केसर बाई वाले निर्णय का प्रश्न है, जो कि प्रतिवादी की ओर से प्रस्तुत किया गया है, वह वर्तमान मामले पर चस्पा नहीं होता है, क्योंकि उक्त निर्णय में धारा 49 के परंतुक पर विचार नहीं किया गया है।

13. उपर्युक्त विवेचन से उक्त दोनों विवाद्यकों का निर्णय इस प्रकार से किया जाता है कि इकरारनामा-प्रलेख साक्ष्य में तब ही साक्ष्य में ग्राहय होगा जबकि कमी स्टाम्प की पूर्ति कर उस पर 10 गुना शास्ति वादी न्यायालय में एक माह में जमा करवायेगा और ऐसा करने के उपरांत यह प्रलेख रजिस्ट्रेशन अधि० की धारा 49 के परंतुक के अनुसार समपार्शिवक उद्देश्य हेतु साक्ष्य में ग्राहय होगा। वादी को कितनी राशि न्यायालय में जमा करवानी है, इसका अंकन आदेश तालिका में किया जावेगा ।"

[18]

After passing of the above order dated 10.07.2001, no compliance was made whatsoever till date by the plaintiff-appellant. Not only this, no evidence at all was adduced by the plaintiff to prove his claim in the case. It is also significant to notice here that both the parties have not adduced any evidence whatsoever in the present case apart from the fact that no compliance of the above order was made. Thus, it can safely be said that in a matter where after filing plaint, written statement is filed and issues are framed, no evidence is led either by the plaintiff or the defendant then in that situation unless the other party admits a claim made by the plaintiff till then in absence of any evidence led by the plaintiff to prove his claim, the suit is not liable to be decreed.

After carefully examining the findings recorded by the trial Court, I am of the opinion that when the parties have failed to lead evidence then simply on the basis of

filing plaint, the suit was not liable to be decreed. The trial Court has assigned cogent reasons and the findings recorded by the trial Court appears to be based on proper reasonings. Taking into consideration the facts and circumstance of the case, no interference is required by this Court in the impugned judgment and decree passed by the trial Court. The answer to the point framed is accordingly.

The appeal being devoid of merit is hereby dismissed.

(SATYA PRAKASH PATHAK)J.

/jpa